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No. _____

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1991

WALTER BETHKE AND WILLIAM L. BLAKE,
Petitioners,

vs.

BAKER MOTORS AND 12900 LAKE AVENUE CONDOMINIUM ASSOCIATION,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

PETITION FOR WRIT OF CERTIORARI

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I.

QUESTIONS PRESENTED

1. May a governmental entity ignore or bypass a state statute designating certain personal property as exempt and deprive a petitioner of his exempt property without due process of law in contravention of the Fourteenth Amendment to the Constitution?

2. May a trial court without due process of law guaranteed by the Fourteenth Amendment to the Constitution bypass Section 16, Article I of the Ohio Constitution which provides that all courts shall be open and every person shall have access to the court to seek a remedy for injury to his or her land, goods, person, or reputation and deprive a litigant and his attorney of access to that court by arbitrarily dismissing a complaint for declaratory judgment asking the court to determine the meaning of the Ohio exemption statute, O.R.C. §2329.66(A)(2) and asking the court to preserve a debtor's exempt property?

3. May a trial court assess debtor and his counsel a charge of Ten Thousand Dollars ($10,000.00) for their good faith attempt to enforce a debtor's exemption statute in state court?

4. May a state trial court judge, without notice that he intends to rule on a motion for State Rule 11 damages proceed against the attorney and his client, client being not present in court and assess damages against the two of them in the amount of Ten Thousand Dollars ($10,000.00) attorney fees to opposing counsel for his compensation for having filed a Rule 12(B)(6) O.R.C.P. motion, without any relation to opposing counsel's services, in violation of due process of law guaranteed by the Fourteenth Amendment to the Constitution?

II.

RULE 28.1 STATEMENT

12900 Lake Avenue Condominium Association is an Ohio corporation for profit having no subsidiaries whatever. Its sole business is the operation of the condominium located at 12900 Lake Avenue, Lakewood, Cuyahoga County, Ohio.

Baker Motors is an Ohio corporation having no subsidiary whatever and operating a towing and storage business in Lakewood, Ohio.

PARTIES BELOW

Walter S. Bethke and his attorney, William L. Blake, petitioners herein, and Baker Motors, and 12900 Lake Avenue Condominium Association, respondents.

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PETITION FOR WRIT OF CERTIORARI
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PETITION FOR WRIT OF CERTIORARI

Petitioners, Walter Bethke and his attorney, William L. Blake, respectfully pray that a Writ of Certiorari issue to reverse the decision of the Ohio Supreme Court of April 17, 1991, rehearing denied May 15, 1991 affirming the judgment and decision of the Cuyahoga County Court of Appeals.

OPINIONS BELOW

This petition seeks review of a decision of the Ohio Supreme Court, affirmed on rehearing, refusing to certify a record of the Court of Appeals of Cuyahoga County, Ohio, which decision of the Court of Appeals in turn affirmed a decision of the Cuyahoga County Common Pleas Court dismissing petitioners' complaint for declaratory judgment and assessing petitioners with Ten Thousand Dollars ($10,000.00) attorney fees payable to opposing counsel, without reference to work required by said counsel, for petitioners' audacity in filing a complaint for declaratory judgment. The decision also deprived petitioner Walter S. Bethke of his exempt motor vehicle without hearing and without notice, and it assessed damages against him illegally contrary to Ohio Civil Rule 11 which indicates that damages under said state rule shall be assessed only against the offending attorney. It also deprived petitioner and his counsel of due process in failing altogether to notify them that the court intended to rule on the Rule 11 motion presented in one paragraph as an afterthought in respondent's Rule 12(B)(6) motion.

The opinion of the Court of Appeals for Cuyahoga Court is included in the transcript attached hereto, reproduced in the Appendix at pages A4 to A15. The order of the Court of Common Pleas of Cuyahoga County, Case No. 165453 is attached hereto and printed in the Appendix at page A16.

JURISDICTION

The judgment of the Court of Appeals of Ohio, Eighth District, Cuyahoga County, was entered on September 11, 1990. A Notice of Appeal was timely filed in the Ohio Supreme Court, filed contemporaneously with a Memorandum in Support of Jurisdiction. That court, on April 17, 1991, overruled petitioner's motion for an order directing the Court of Appeals for Cuyahoga County to certify its record.

On May 15, 1991, the Supreme Court of Ohio ordered that rehearing in the case be denied, said order being by a 4-to-3 decision. The decision of the Court of Appeals had been by a 2-to-1 decision.

Upon consideration of the Application of Counsel for Petitioners, the Honorable John Paul Stevens, Associate Justice of the Supreme Court of the United States, extended the time for filing a Petition for Writ of Certiorari in this case up to and including September 27, 1991. The Petition is timely filed within the time period granted by the Court. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL AMENDMENT INVOLVED

United States Constitution, Amendment XIV, Section 1, Citizens of the United States. The text of this amendment can be found in the Appendix at A26.

STATE CONSTITUTION INVOLVED

Section 16, Article One, Ohio Constitution. Courts shall be open. The text of this section can be found in the Appendix at A26.

STATE STATUTES INVOLVED

Ohio Revised Code §2329.66(A)(2). Exempted interests and rights. The text of this statute can be found in the Appendix at A31.

Ohio Revised Code §2323.51. Frivolous conduct in civil actions. The text of this can be found in the Appendix at A28.

Ohio Revised Code §2721.02. Force and Effect of Declaratory Judgments. The text of this statute can be found in the Appendix at A31.

STATE RULES INVOLVED

Rule 57, Declaratory Judgments. The text of this Rule can be found in the Appendix at A33.

Rule 11, Signing of Pleadings. The text of this Rule can be found in the Appendix at A32.

Rule 12(B)(6), Defenses and Motions, How Presented. The text of this Rule can be found in the Appendix at A33.

STATEMENT OF THE CASE

A. Prior Proceedings

Petitioner Bethke is a real estate salesman. He, with certain other individuals, formed a corporation known as WSB Investments, Inc. This corporation purchased certain condominium units in the Carlyle Condominiums, 12900 Lake Avenue, Lakewood, Cuyahoga County, Ohio. The corporation subseqeuently dissolved and Bethke received, as his interest in the corporation, a condominium encumbered by a mortgage for more than the condominium would sell for. The unit was eventually foreclosed on by the mortgagee, and both contemporaneously with the foreclosure action and subsequent to sale, respondent Condominium Association sued Bethke himself in two separate lawsuits covering the same period of time for claimed unpaid condominium association maintenance fees. A judgment was recovered against Bethke in the Cuyahoga County Common Pleas Court, a state court of Ohio. The Association transferred said judgment over to the Lakewood Municipal Court and after transfer, levied upon Bethke's temporarily inoperable, obviously exempt, automobile. Not only did the Association levy on the automobile, but rather than making Bethke custodian of same, it ordered the same towed and stored by respondent Baker Motors. Bethke filed an immediate claim of exemption with the Lakewood Municipal Court which that court ultimately sustained after having the automobile appraised by two appraisers. However, the referee of the Lakewood Municipal Court determined that the automobile was exempt, but proposed an order that Bethke not have back his exempt automobile unless he paid respondent Baker Motors its towing and storage

charges, which charges by then exceeded the appraised value of the automobile. Bethke's counsel, Blake, petitioner herein, seasonably filed Objections to the Recommendations of the Referee, and after the court affirmed the Referee's decision, sought to set aside or modify the decision of the Court, pointing out that the same invalidated the Ohio Exemption Statute. After the court made it clear that it would not modify its order, he sought to have Baker Motors made a New Party Defendant for purposes of appeal. If the cause had been appealed without Baker Motors being made a New Party Defendant the automobile would have ceased to exist by the time the appeal could have been heard. If Bethke had paid the towing and storage charges, the appeal would have been moot. The Trial Court refused to make Baker Motors a New Party Defendant.

B. The Case Leading Up to the Appeal Herein

On February 24, 1989, petitioners filed in the Court of Common Pleas of Cuyahoga County, Ohio a Complaint for Declaratory Judgment and Equitable Relief and Money Damages.

As indicated, no appeal was ever filed with the Cuyahoga County Court of Appeals from the decision of the Lakewood Municipal Court since said appeal would have been a useless act. Had petitioner paid the towing and storage charges allegedly under protest the appeal would have been dismissed as "moot". Had petitioner not paid the towing and storage charges the vehicle sought to be preserved would have disappeared long before the appeal would be heard. Accordingly, petitioner Blake, advising his client that he believed that he could preserve his vehicle, filed in the Cuyahoga County

Common Pleas Court a Petition for Declaratory Judgment. A portion of the prayer of the petition read as follows:

1. As to the exact meaning of Ohio Revised Code Section 2329.66(A)(2) and its constitutionality and its effect on all courts of record throughout the State of Ohio;

2. As to whether or not said statute permits a court or others to compel a debtor to pay for his exemption, either to the court, a towing and storage company, or a creditor, or whether, in the alternative, the statute means what it appears to mean, namely that property is "exempt";

3. That the judgment entry of the Lakewood Municipal Court attaached hereto shall be treated as conforming to statute, and declaring an exemption in favor of Plaintiff, and that the balance of the order indicating that Plaintiff pay something for his exemption, be treated as a nullity, being in contravention of law and in contravention of state statute, as well as inequitable.

Respondents filed a Rule 12(B)(6) motion asking the Common Pleas Court to dismiss the petition, adding toward the end of the motion, a request for Rule 11 damages and attorney fees payable to their counsel in the amount of Ten Thousand Dollars ($10,000.00). The Court of Common Pleas set the matter down for hearing on Friday, July 14, 1989. The Court said:

> "The defendants, the 12900 Lake Avenue Condominium Association and Baker Motors filed a joint Motion to Dismiss the Complaint on March 28, 1989 to which the plaintiff filed an answer paper entitled 'Answer to Defendants' Motion to Dismiss'.
>
> * * *

> "So the matter proceeds today on the defendants' joint Motion to Dismiss the Complaint. No answer has been filed in this case; in lieu of answer, the joint motion."

As is indicated in the foregoing, at the commencement of the hearing and prior thereto the court gave no indication whatever that he would proceed to rule on the Rule 11 motion for damages and attorney fees. Petitioner Bethke, against whom said damages could not be assessed pursuant to Rule 11 O.R.C.P. was not present in court and was assessed damages in the amount of $5,000.00, and respondent Blake, his attorney, was also assessed damages, consisting of attorney fees to attorneys for the prevailing parties, respondents. Relative to fees, the sole testimony was from counsel for respondent Baker Motors who claimed that his client had occurred $542.00 for legal services, including $15.00 delivery costs to send something over to counsel for the other respondent. Petitioners claim to have been deprived of due process pursuant to the Fourteenth Amendment to the Constitution.

C. Court of Appeals Proceedings

The Cuyahoga County Court of Appeals in a 2-to-1 decision, dissenting judge held that the trial court failed to conduct a "hearing within the requirements of O.R.C. §2323.51 which statute contemplates a hearing which allows the parties and counsel of record involved to present any relevant evidence at the hearing," indicating that the hearing is designed "to determine whether particular conduct was frivolous", and "whether any party was adversely affected by it . . . ." Dissenting opinion, page four, reads in part as follows:

"My reading of the transcript leads me to believe that the trial court developed a vindictive attitude towards Mr. Blake. (TR 41, 42, 43) By imposing large sanctions against an attorney, $5,000.00 here, a court may create a chilling effect upon the vigorous pursuit of legal remedies. Nor do I find support for a sanction of $5,000.00 against the appellant Walter Bethke. The court declared without any evidence to substantiate his contention that your client's actions have been to try to beat the system by penalizing and actually harming all the other people in that condominium building who make up the condominium association.' There was no evidence of such harm.

"The validity of the initial Lakewood Municipal Court action requiring Walter Bethke to pay storage and towing costs in contravention of state law has never yet been determined. Nor has the refusal of that court to make the towing company a party to the action been considered in any approriate forum.

"I find the action of the court unfounded in these regards and would void the sanctions imposed upon both Walter Bethke and William Blake."

D. Supreme Court Proceedings

An appeal was timely taken to the Ohio Supreme Court who refused to certify the record of the Court of Appeals and refused reconsideration of its order by a 4-to-3 decision.

REASONS FOR GRANTING THE WRIT

1-2 A governmental entity may not ignore or bypass a statute designating certain personal property as exempt, thereby depriving a petitioner of his exempt property without due process of law in contravention of the Fourteenth Amendment to the Constitution. A state court should not only be open to the rich and powerful; it should also be opened to the economically disadvantaged debtor who desires to preserve his exempt property.

It has been held that the fundamental guaranty of due process is absolute, and not merely relative in *Hammond Packing Co. v. Arkansas* (1909), 212 U.S. 322, 53 L. Ed. 530, 29 S. Ct. 370.

It was also held that the Fourteenth Amendment to the Constitution of the United States requires that state actions shall be consistent with fundamental principles of liberty and justice which lie at the basis of all our civil and political institutions. *Herbert v. Louisiana* (1926), 272 U.S. 312, 71 L. Ed. 270, 470 S. Ct. 103, 48 ALR 1102. It has also been held that the federal guaranty of due process extends to state actions through its judicial as well as through its legislative, executive, or administrative branch of government. *Brinkerhoff-Paris Trust and Sav. Co. v. Hill* (1930), 281 U.S. 673, 74 L. Ed. 1107, 50 S. Ct. 451.

It was held that judicial judgment in applying due process clauses must move within the limits of accepted notions of justice and is not merely to be based upon idiosyncrasies of merely personal judgment as was the case of the trial court being reviewed herein. *Leland v. Oregon* (1952), 343 U.S. 790, 96 L. Ed. 1302, 76 S. Ct. 1002 *reh. den.* 344 U.S. 848, 97 L. Ed. 659, 73 S. Ct. 4.

There also has been a long line of cases indicating that the Fourteenth Amendment safeguards fundamental rights of persons and of property against arbitrary and oppressive state action, commencing with the case of *Thomas Cusack Company v. Chicago* (1917), 242 U.S. 526, 61 L. Ed. 472, 37 S. Ct. 190. State action which is reviewable under the Fourteenth Amendment is a composite result of both legislation and its judicial interpretation. *Wheeling Steel Corporation v. Glander* (1949), 337 U.S. 562, 93 L. Ed. 1544, 69 S. Ct. 1291, 40 Ohio Ops. 101, 55 Oh. L. Abs. 305. It has also been held that rights under the Fourteenth Amendment turn on the power of the state, no matter by what organ it acts. *Hughes v. Superior,* Court of Calif. (1950) 339 U.S. 460, 94 L. Ed. 985, 70 S. Ct. 712, 41 Oh. Ops. 80, 47 Oh. L. Abs. 298.

In *Bouie v. Columbia* (1964), 378 U.S. 347, 12 L. Ed. 2d 894, 84 S. Ct. 1697 it was held that a violation of the due process clause may be accomplished by the state judiciary in the course of construing an otherwise valid state statute.

It is to be noted that Ohio, like most of the states, grants an exemption to debtors consisting in part of an automobile. In the case of Ohio, the value of the vehicle cannot exceed $1,000.00. Debtor, a real estate salesman, needed his automobile to pursue his livelihood. Respondent condominium association, having full knowledge that debtor's vehicle was not worth $1,000.00 and was therefore exempt, proceeded to levy on same. Even though debtor's counsel forthwith notified the municipal court of debtor's claim of exemption, the court took some time to have the vehicle appraised by two separate appraisers and thereafter to issue a finding that the vehicle was indeed exempt. Had this been all that the

Lakewood Muncipal Court did there would be no case before this court. However, as is apparent from the record, the Lakewood Muncipal Court ordered that debtor pay for his exemption, in fact pay in excess of the value of the exempt vehicle, as determined by the court's own appraisers. Obviously, the action of the Lakewood Court was to deprive debtor of his exemption. It constituted a taking of property without due process of law. Debtor's counsel sought to cause the trial court to amend its entry to conform to statute, to no avail. His counsel sought, after it became apparent that the court would not amend its entry, to have the court name the towing and storage company as a new party defendant, even sending along an onionskin notice of the appeal which he intended subsequently to file, to show the trial court the necessity of naming the towing and storage company as a defendant; the reason for naming them as a defendant would be to preserve the debtor's exempt property on appeal. The court, with full knowledge of the reason why petitioner sought to have the towing and storage company named as a defendant refused to so name them. Thereafter, had petitioners sought to appeal the order of the Lakewood Municipal Court they had two options, to wit:

1. They could attempt to pay the towing and storage charges under protest there being no statute or case law so permitting and the almost certain probability was that their appeal would be dismissed as moot; or

2. They could appeal and not pay for the towing and storage which would, of a certainty, result in the vehicle being no longer in existence by the time the appeal was heard. As Judge Stillman pointed out in his dissenting opinion clearly indicated, the action of the Common Pleas Court is dismissing the complaint meant

that no court anywhere ever made a legal determination as to debtor's claim. As Judge Stillman indicated, "By compelling the debtor to pay for towing and storage charges, the court was rewarding the creditor for violation of the debtor's statutory right."

The taking of debtor's vehicle was a clear violation of his due process as well as being a clear violation by the court of the statute, O.R.C. §2329.66(A)(2).

As indicated, appeal from the order of the Lakewood Municipal Court would have been a useless act. Petitioner Blake, counsel for petitioner Bethke, was quite discouraged with having to advise his client that it appeared that he could not have his vehicle back, that the same had been stolen from him by respondents without due process of law for which petitioner Bethke had no remedy. He then commenced to study the Ohio Declaratory Judgment Statute, O.R.C. §2721.01 *et seq.* as well as Rule 57 O.R.C.P. and it appeared to him, by virtue of the statute and the rule and the case decisions that it would be feasible to file a Petition for Declaratory Judgment in the Court of Common Pleas, have determined the very necessary issues required to be determined and at the selfsame time preserve petitioner Bethke's automobile. He accordingly advised petitioner Bethke that he was not appealing, on petitioner's behalf, the decision of the Lakewood Municipal Court but was rather filing a Complaint for Declaratory Judgment, advising his client that said filing would preserve the vehicle.

The Ohio Rule 12(B)(6) motion section reads identical to the Federal Rule, and respondents promptly filed a joint Rule 12(B)(6) motion. Appended to said motion essentially as an afterthought, respondents' counsel asked $10,000.00 attorney fees pursuant to Rule 11

O.R.C.P. As this court will note from the attached Rule 11, Appendix A32, the Ohio Rule does not read the same as the Federal Rule but rather provides only that, "For a wilful violation of this Rule *an attorney* may be subjected to appropriate action." (Emphasis ours) So far as we can determine all Ohio decisions other than this one have always previously held that a *litigant*, at least other than a *pro se* litigant, shall not be subjected to sanctions under the Rule.

No case other than this one under appeal herein holds that Rule 11 was enacted in order to be a blessing, boon, windfall, or weal to the prevailng attorney, *i.e.*, if the rule were in fact enforced, the attorney could recover back only the reasonable value of his services, not ten times their reasonable value. Note that Judge Stillman of the Cuyahoga County Court of Appeals would impose upon Rule 11 the requirements of Ohio Revised Code §2323.51 entitled "Frivolous Conduct in Civil Actions". That statute has certain safeguards indicating that the court is to set a date for a hearing specifically "to determine whether particular conduct was frivolous, to determine (further) if the conduct was frivolous whether any party was adversely affected by it," etc.

And the court must give "notice of the date of the hearing described in Division (B)(2)(a) of this Section to each party or counsel of record who allegedly engaged in frivolous conduct and to each party allegedly adversely affected by frivolous conduct.

Thereafter, the court must conduct a hearing, etc.

It will be noted that in the case herein the court indicated only that the court was conducting a hearing on the Motion to Dismiss; as noted, petitioner Bethke was not even present at said hearing. Petitioner Blake

had only filed an answer relative to the Rule 12(B)(6) motion stating that the court did have jurisdiction and that the complaint set forth a valid complaint under the Declaratory Judgment Statute and Rule. Rule 11 was nowhere addressed in his answer to the Rule 12(B)(6) motion, nor did he have any understanding whatever that the same would be considered by the court until the court, as with a sledge hammer, struck him with same in the course of the 12(B)(6) hearing, apparently because the court considered that the attorney was schooling his client to avoid his just obligations, the justness of which was on for appeal before the Cuyahoga Court of Appeals at that very moment.

The action of the trial court in failing to give petitioners a hearing clearly violated their rights under the Fourteenth Amendment to the Constitution.

3-4 A trial court should not be allowed to assess a debtor and his counsel a charge of Ten Thousand Dollars ($10,000.00) for their attempt to come in to state court and in good faith attempt to enforce a debtor's exemption statute. A trial court judge, without notice that he intends to rule on a motion for State Rule 11 damages, should not be permitted to proceed against the attorney and his client, client not even being present in court, and assess damages against each of them in the total amount of Ten Thousand Dollars ($10,000.00) as attorney fees to opposing counsel for compensation for having filed a Rule 12(B)(6) O.R.C.P. motion.

In the case herein it will be noted that the Lakewood Municipal Court, a state court of the State of Ohio, deprived petitioner Bethke of his property without due process of law by holding that he had to pay towing and storage costs in excess of the value of his vehicle. The rule is in fact well established that laws exempting property of a debtor from execution are to be construed liberally in his favor. *State ex rel. Coles, Jr. v. Shook* (1918), 97 Ohio St. 164. After that court deprived him of his property consisting of his vehicle, petitioners Bethke and his attorney Blake commenced their declaratory judgment action in the Cuyahoga County Court of Common Pleas, the only action which they could have taken which would have preserved the vehicle. That court, with notice only that it was intending to rule on the disposition of their complaint, took from petitioners their property in the amount of Ten Thousand Dollars ($10,000.00) without notice and without hearing.

It has been held that notice and hearing together with legally competent tribunal having jurisdiction of the case constitute basic elements of constitutional

requirement of due process of law in *Powell v. Alabama* (1932), 287 U.S. 45, 77 L. Ed. 158, 53 S. Ct. 55, 84 ALR 527.

In the case of *Sexton v. Barry*, 233 F. 2d 220 (6th Cir. 1956), the court said on page 44, the following:

> "Due process is 'a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial.' *Trustees of Dartmouth College v. Woodward*, 4 Wheat. 518, 4 L. Ed. 629."

It has been held that protection of the individual from arbitrary action is the very essence of due process of law in *Slochower v. Board of Higher Education* (1956), 350 U.S. 551, 100 L. Ed. 692, 76 S. Ct. 637 *reh. den.* 351 U.S. 944, 100 L. Ed. 1470, 76 S. Ct. 843. It has also been held that a claim that a person is entitled to "substantive due process" means that the state action which deprives him of property must have a rational basis; the reason for the deprivation may not be so inadequate that the judiciary will characterize it as "arbitrary". *Jeffries v. Turkey Run Consol. School Dist.* (CA 7 Ind. 1974), 492 F.2d 1.

CONCLUSION

Petitioner Bethke was entitled to his statutory exemption. He was deprived of that exemption by the action of the Lakewood Municipal Court. That decision was unappealable inasmuch as the court refused to make the towing and storage company a party defendant. Paying the towing and storage would have made the appeal moot. Failure to pay the towing and storage would have meant that the vehicle was not in existence by the time the Court of Appeals rendered its decision. Petitioner Blake, his counsel, accordingly filed in the Court of Common Pleas of Cuyahoga County, Ohio a complaint for declaratory judgment asking that court to determine the meaning of the exemption statute and asking that court to determine that the portion of the order of the Lakewood Muncipal Court which said that one must pay for one's exemption was in fact a nullity. He asked for ancillary relief, including return of the motor vehicle. Respondents filed a Rule 12(B)(6) motion, adding, as an afterthought, a paragraph asking for damages pursuant to the state's Rule 11 O.R.C.P., which rule does not provide for the assessment of sanctions against a party represented by counsel. The trial court without notice that it was going to hear the Rule 11 motion and without petitioner Bethke being even present, assessed attorney fees against both petitioners in the amount of Ten Thousand Dollars ($10,000.00) payable to counsel for respondents. Petitioners were clearly deprived of due process pursuant to the Fourteenth Amendment to the U. S. Constitution.

A writ of certiorari should issue to review the judgment of the Ohio Supreme Court and the judgment and opinion of the Court of Appeals for Cuyahoga County, Ohio.

Respectfully submitted,

WILLIAM L. BLAKE
900 Rockefeller Building
614 Superior, N.W.
Cleveland, Ohio 44113
(216) 241-5730
Counsel of Record for Petitioners

APPENDIX

ORDER OF THE OHIO SUPREME COURT DENYING REHEARING

(To wit: May 15, 1991)

Case No. 90-2209

THE SUPREME COURT OF OHIO

1991 TERM

WALTER BETHKE,
Appellant,

v.

BAKER MOTORS, *et al.*,
Appellees.

REHEARING ENTRY

(Cuyahoga County)

IT IS ORDERED by the Court that rehearing in this case be, and the same is hereby, denied.

(Court of Appeals No. 58258)

/s/ THOMAS J. MOYER
THOMAS J. MOYER
Chief Justice

ORDER OF THE UNITED STATES SUPREME COURT EXTENDING TIME FOR FILING PETITION FOR WRIT OF CERTIORARI

(Dated this 13th day of August, 1991.)

No. A-124

SUPREME COURT OF THE UNITED STATES

WALTER BETHKE,
Petitioner,

v.

BAKER MOTORS, *et al.*

ORDER

UPON CONSIDERATION of the application of counsel for the petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including September 27, 1991.

/s/ JOHN PAUL STEVENS
Associate Justice of the Supreme Court of the United States

ENTRY OF THE SUPREME COURT OF OHIO OVERRULING MOTION TO CERTIFY THE RECORD

(To wit: April 17, 1991)

Case No. 90-2209

THE SUPREME COURT OF OHIO

1991 TERM

WALTER BETHKE,
Appellant,

v.

BAKER MOTORS, *et al.*,
Appellees.

ENTRY

Upon consideration of the motion for an order directing the Court of Appeals for Cuyahoga County to certify its record, it is ordered by the Court that said motion is overruled.

COSTS:

Motion Fee, $40.00, paid by William L. Blake.

(Court of Appeals No. 58258)

/s/ THOMAS J. MOYER
THOMAS J. MOYER
Chief Justice

JOURNAL ENTRY OF THE COURT OF APPEALS, EIGHTH DISTRICT, CUYAHOGA COUNTY

DATE OF ANNOUNCEMENT OF
DECISION: AUGUST 23, 1990

No. 58258

COURT OF APPEALS OF OHIO,
EIGHTH DISTRICT
COUNTY OF CUYAHOGA

WALTER BETHKE,
Plaintiff-Appellant,

v.

BAKER MOTORS, *et al.*,
Defendant-Appellee.

JOURNAL ENTRY AND OPINION

CHARACTER OF PROCEEDING:

CIVIL APPEAL FROM THE COMMON PLEAS COURT CASE NO. 165,453

JUDGMENT:

AFFIRMED

DATE OF JOURNALIZATION:

APPEARANCES:

For Plaintiff-Appellant:
WILLIAM L. BLAKE
900 Rockefeller Building
614 Superior Avenue, N.W.
Cleveland, Ohio 44113

For Defendant-Appellee:
RONALD H. MILLS
106 Ohio Savings Building
22255 Center Ridge Road
Rocky River, Ohio 44116

VICTOR, *J.*:

Plaintiff-Appellant Walter Bethke ("appellant") is a judgment debtor of defendant-appellee 12900 Lake Avenue Condominium Association ("appellee-Association"). Appellee-Association had obtained a judgment on October 19, 1988 against appellant in the Cuyahoga County Court of Common Pleas in the amount of $8,391.48 for delinquent condominium fees and attorney fees.

Appellant appealed the judgment of the Court of Common Pleas, but he failed to obtain an order of stay of said judgment. Thus, in November, 1988, appellee-Association attained a certificate of judgment for transfer and transferred the judgment to the Lakewood Municipal Court. Thereafter, appellee-Association attempted to execute on the judgment by levying on appellant's inoperable 1979 Honda Accord that was parked in the parking lot of the Carlyle Condominiums, located at 12900 Lake Avenue in the City of Lakewood, Ohio.

Defendant-appellee Baker Motors ("appellee-Baker") was ordered pursuant to the levy by the Lakewood Municipal Court to tow appellant's automobile and to store it at its place of business. Thus, on November 21, 1988, appellee-Baker towed appellant's automobile and exerted custody of it.

Appellant filed with the Lakewood Municipal Court a claim of exemption for the automobile. Appellant argued that at the time of the levy of execution, the automobile's value was clearly less than $1,000, therefore, it was exempt pursuant to R.C. 2329.66(A)(2). On December 5, 1988, the Lakewood Municipal Court conducted a hearing on appellant's claim of exemption. The Lakewood Municipal Court granted appellant's claim of exemption, but it ordered appellant to pay the costs of storage in order to have the automobile returned.

Appellant filed several motions with the Lakewood Municipal Court challenging its December 5, 1988 order and seeking the return of his automobile from appellee-Baker. The Lakewood Municipal Court overruled appellant's numerous motions. Appellant failed to effectuate an appeal from the Lakewood Municipal Court's judgments and orders; hence, they became final orders.

On February 24, 1989, appellant filed a complaint in the Cuyahoga County Court of Common Pleas for declaratory judgment, equitable relief and money damages. Appellant contended that the Lakewood Municipal Court's judgment correctly granted his claim for exemption, but its entry requiring him to pay storage costs should be declared a nullity. Appellant further alleged that appellees were holding his property illegally and that the property should be returned to him at appellee's expense.

On March 28, 1989, appellees filed a joint motion to dismiss appellant's complaint, pursuant to Civ. R. 12(B)(6), for failure to state a claim upon which relief can be granted. Appellees argued that appellant and his attorney, William L. Blake, were pursuing the instant matter for the purposes of delay and further harassment

towards appellee-Association. Appellees asserted that there existed no controversy since all the issues had been decided by the Lakewood Municipal Court. Appellees claimed that appellant's remedy was through the appellate procedures and not by an action for declaratory relief in the Court of Common Pleas.

In their motion to dismiss, appellees also sought sanctions against appellant and William L. Blake pursuant to Civ. R. 11. Appellees claimed that they were entitled to sanctions under Civ. R. 11 as a result of appellant and William L. Blake's filing of a frivolous and meritless lawsuit.

On July 14, 1989, the trial court conducted a hearing on appellees' joint motion to dismiss and request for sanctions. On July 18, 1989, the trial court held that appellant failed to state a claim upon which relief may be granted pursuant to Civ. R. 12(B)(6). Thus, appellant's complaint was dismissed with prejudice. The trial court further found that appellant's complaint was both frivolous and meritless and filed by appellant and William L. Blake for the sole purpose to annoy and harass appellees. The trial court ordered appellant to pay appellee-Association $5,000 for sanctions and also ordered William L. Blake to pay appellee-Association $4,000 and appellee-Baker $1,000 for sanctions.

Appellant filed a timely notice of appeal and subsequently raised the following assignments of error:

I. THE COURT ERRED IN IMPOSING SANCTIONS ON PLAINTIFF AND HIS COUNSEL, APPELLANTS HEREIN.

II. THE COURT ERRED IN DISMISSING PLAINTIFF'S COMPLAINT WITH PREJUDICE.

III. THE COURT ERRED IN INSISTING UPON DISCUSSING ISSUES NOT GERMANE TO THE CASE BEFORE IT AND IN IMPOSING SANCTIONS BECAUSE THE COURT BELIEVED THAT PLAINTIFF SHOULD NOT HAVE APPEALED TWO OTHER CASES NOW PRESENTLY BEFORE THIS COURT, ESPECIALLY WHEN THE TRIAL COURT LACKED ANY UNDERSTANDING OF THE FACTUAL BASIS OF THE OTHER APPEALS.

IV. THE COURT ERRED IN AWARDING ATTORNEY FEES TO DEFENDANTS WITHOUT FACTUAL BASIS OR EVIDENCE TO SUPPORT THE AMOUNT OF SAID AWARDS.

V. THE COURT ERRED IN DETERMINING THAT THE CASE WHICH IS BEING APPEALED FROM HEREIN SOMEHOW DELAYED OR PREVENTED APPELLEE CONDOMINIUM ASSOCIATION FROM COLLECTING ITS JUDGMENT.

The issue of whether the trial court erred in dismissing appellant's complaint raised in appellant's second assignment of error will be addressed first.

Appellant contends in his second assignment of error that the jurisdiction of the court of common pleas can be invoked under R.C. Chapter 2721 and Civ. R. 57, Declaratory Judgments. Appellant specifically asserts that the court of common pleas has the authority to declare a portion of the Lakewood Municipal Court's order of December 5, 1988 a nullity.

A party may not substitute an action, based upon a request for a declaratory judgment, for an appeal where the judgment the party is attacking became final long ago. *Tootle v. Wood* (1974), 40 Ohio App. 2d 576, 577; *Wagner v. Krouse* (1983), 7 Ohio App. 3d 378. The use of R.C. Chapter 2721 and Civ. R. 57 as a method of appeal or appellate review is improper where the party has failed to pursue remedies by way of judicial appellate review. *Tootle, supra; Wagner, supra.*

Accordingly, we find that appellant's failure to appeal from the Lakewood Municipal Court requires us to conclude that the Cuyahoga County Court of Common Pleas lacked jurisdiction to consider appellant's complaint for declaratory judgment. Thus, the trial court did not err in dismissing appellant's complaint with prejudice pursuant to Civ. R. 12(B)(6).

Appellant's second assignment of error is without merit and is overruled.

In his first assignment of error, appellant argues that the trial court erred in imposing sanctions against himself and his attorney, William L. Blake, pursuant to Civ. R. 11.

Civ. R. 11 provides in pertinent part:

> *** The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For a willful violation of this rule an attorney may be subjected to appropriate action. Similar action may be taken if scandalous or indecent matter is inserted.

The purpose of Civ. R. 11 is to ensure that a pleading is filed in good faith with adequate grounds to support it. *Stevens v. Kiraly* (1985), 24 Ohio App. 3d 211. A trial court's decision regarding the imposition of sanctions will not be reversed absent an abuse of discretion. *State, ex rel. Fant v. Sykes* (1987), 29 Ohio St. 3d 65.

In the instant matter, the trial court reviewed the briefs submitted on the issue of Civ. R. 11 sanctions and also conducted a hearing. The trial court specifically found that the complaint filed by appellant and his attorney, William L. Blake, was both frivolous and meritless. The sole purpose of filing the complaint was to annoy and harass appellees.

Upon a review of the record in the instant matter, we find that the trial court did not abuse its discretion in imposing sanctions against appellant and William L. Blake.

Appellant's first assignment of error is not well taken and is overruled.

Appellant's third, fourth and fifth assignments of error are not separately argued in appellant's brief. Therefore, they may be disregarded pursuant to App. R. 12(A). *Hawley v. Ritley* (1988), 35 Ohio St. 3d 157; *Jerome Jerry Sullivan-Busman v. TRW, Inc.* (June 8, 1989), Cuyahoga App. No. 55421, unreported.

Appellant's third, fourth, and fifth assignments of error are without merit and are overruled.

Trial court judgment is affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The court finds there were reasonble grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANCIS E. SWEENEY, *P.J.*, concurs

STILLMAN, *J.** dissents.
(See Dissenting Opinion Attached)

/s/ WILLIAM H. VICTOR
WILLIAM H. VICTOR
*Judge**

**SITTING BY ASSIGNMENT:*

Judge Saul G. Stillman, *Retired*
Judge, Eighth Appellate District,
Court of Appeals;

Judge William H. Victor, *Retired*
Judge, Ninth Appellate District,
Court of Appeals.

N.B. This entry is made pursuant to the third sentence of Rule 22(D), Ohio Rules of Appellate Procedure. This is an announcement of decision (see Rule 26). Ten (10) days from the date hereof this document will be stamped to indicate journalization, at which time it will become the judgment and order of the court and time period for review will begin to run.

COURT OF APPEALS OF OHIO,
EIGHTH DISTRICT

COUNTY OF CUYAHOGA

DATE: AUGUST 23, 1990

NO. 58258

WALTER BETHKE,
Plaintiff-Appellant,

v.

BAKER MOTORS, *et al.*,
Defendant-Appellees.

DISSENTING OPINION

STILLMAN, *J.*, DISSENTING:

I find it necessary respectfully to dissent from the decision of the majority in this case.

The history of this litigation indicates that the Plaintiff-Appellant, Walter Bethke, is a judgment debtor of the Defendant-Appellees by virtue of an action taken against him by the principals of a condominium complex in which he has been residing. Apparently from the tortuous record before us and its many ramifications, the Appellant resident has been most ingenious in seeking out methods to avoid paying assessments and other charges levied upon his fellow condominium residents. Nevertheless, a judgment in the amount of $8391.48 has been entered against him.

In pursuit of assets upon which to obtain satisfaction of this judgment, the appellee condominium representatives sought to levy upon the appellant resident's dilapidated 1979 vehicle located on the premises. This vehicle appears admittedly to have a value of less than $1,000 and is therefore exempt from levy by virtue of statute. R.C. 2329.66(A)(2).

Nevertheless, the Lakewood Municipal Court refused to order the return of the vehicle by the towing company until the debtor had paid the cost of towing and storage. I am unable to accept the rationale of such a ruling if we are to accord the statutory exemption any validity whatever. The rule is well established that laws exempting property of a debtor from execution are to be construed liberally in his favor. *State, ex rel. Coles, Jr. v. Shook* (1918), 97 O.S. 164. By compelling the debtor to pay for towing and storage charges, the court was rewarding the creditor for a violation of the debtor's statutory right.

In addition to this legal error, the Lakewood Municipal Court also rejected the judgment debtor's motion to join the towing company as a party to the action. In effect this served to restrict the legal options open to the debtor. I agree with the view of the majority that a direct appeal to this appellate court might have been the most efficacious path open to him but a necessary party to that appeal, the towing company, would have been lacking at that juncture.

What the judgment debtor then chose to do was to file an action for a declaratory judgment which in his view might have resolved the issues presented. He did so in the forum of the Cuyahoga County Court of Common Pleas.

When this action was filed, the appellees filed a motion to dismiss and also sought sanctions against the appellant and his legal counsel pursuant to Civil Rule 11. Without any inquiry into the underlying merits of the legal claims asserted, the trial court conducted a "hearing" which did not, in my judgment, accord with the requirements of R.C. 2323.51 entitled "Frivolous conduct in civil actions." This statute contemplates under R.C. 2323.51(B)(c) a "hearing" which allows the parties and counsel of record involved to present any relevant evidence at the "hearing." The hearing is designed "to determine whether particular conduct was frivolous," and "whether any party was adversely affected by it . . . ."

At the court session of July 14, 1989, counsel for the condominium contended that no controversy existed in this action, that Mr. Blake, legal counsel for the judgment debtor had a remedy by appeal to the court of appeals which he could not "bypass." In response, Mr. Blake requested the court's interpretation of the exemption statute (R.C. 2329.66(A)(2)). He also discussed his reasons for not filing an appeal as well as his purpose in seeking a declaratory judgment.

Shortly after this statement the trial court and Mr. Blake indulged in a protracted discussion of Mr. Blake's client's relationship with the condominium management and its judgment against him. An obvious air of hostility pervaded the court room viv-a-vis the trial judge and Mr. Blake. By the time page 28 of the hearing was reached, the court asserted that the action was frivolous "in this case" and "I think probably in the other one as well."

The court asked Mr. Blake if he wished to offer any evidence and Mr. Blake said he was not prepared to do so (P. 30 of Transcript). Neither of the moving parties

offered any "additional evidence" (Tr. 30). In point of fact, no sworn evidence of any kind was presented.

On the question of sanctions, statements were made by counsel. No sworn evidence was presented. Baker Motors was said to have expended $542 for legal services. The condominium association had been clearly compelled to undertake legal proceedings for the collection of unpaid items by Mr. Bethke's conduct but there was no evidence adduced to justify the conclusion that Mr. Blake was in violation of any standards of professional legal conduct in his representation of his client by filing the declaratory judgment petition.

My reading of the transcript leads me to believe that the trial court developed a vindictive attitude towards Mr. Blake (Tr. 41, 42, 43). By imposing large sanctions against an attorney, $5,000 here, a court may create a chilling effect upon the vigorous pursuit of legal remedies. Nor do I find support for a sanction of $5,000 against the appellant Walter Bethke. The court declared without any evidence to substantiate his contention that "Your client's actions have been to try to beat the system by penalizing and actually harming all the other people in that condominium building who make up the condominium association." There was no evidence of such harm.

The validity of the initial Lakewood Municipal Court action requiring Walter Bethke to pay storage and towing costs in contravention of state law has never yet been determined. Nor has the refusal of that Court to make the towing company a party to the action been considered in any appropriate forum.

I find the action of the court unfounded in these regards and would void the sanctions imposed upon both Walter Bethke and William Blake.

JUDGMENT ENTRY OF THE COURT OF COMMON PLEAS

JULY 18, 1989

CASE CV-165453

COURT OF COMMON PLEAS

CUYAHOGA COUNTY, OHIO

BETHKE, WALTER, S.

vs.

BAKER MOTORS, *et al.*

JUDGE: McALLISTER, RALPH A.

JUDGMENT ENTRY. HEARING HAD. PLTFS COMPLAINT IS DISMISSED W/PREJ AT PLTFS COST. COURT ORDERS PLTF BETHKE & PLTFS COUNSEL BLAKE TO EACH PAY $5,000.00 SANCTIONS TO DEFTS OSJ FINAL. VOL 1167 PGS 571-572. NOTICE ISSUED.

ORDER OF THE LAKEWOOD MUNICIPAL COURT GRANTING DEMAND FOR APPRAISAL

To-wit November 30, 1988

No. 88 CVF 3677

The Lakewood Municipal Court

Term, A. D. 1988

12900 LAKE AVE. CONDO ASSOCIATION,
et al.,
Plaintiff,

vs.

WALTER S. BETHKE,
Defendant.

JUDGMENT ENTRY

Plaintiff's Demand for Appraisal of Exempted Property is hereby granted. The court orders the property to be appraised in accordance with O.R.C. 2329.68 by two disinterested parties at plaintiff's costs.

ORDER OF THE LAKEWOOD MUNICIPAL COURT GRANTING CLAIM OF EXEMPTION

To-wit December 5, 1988

No. 88 CVF 3677

The Lakewood Municipal Court

Term, A. D. 1988

12900 LAKE AVE. CONDO ASSOCIATION,
et al.,
Plaintiff,

vs.

WALTER S. BETHKE,
Defendant.

JUDGMENT ENTRY

Defendant's automobile having been appraised by two disinterested parties at $200.00 and $100.00-$200.00, the defendant's claim of exemption is hereby granted, and said automobile is ordered to be returned to the defendant provided that storage costs are paid by the defendant.

JOURNAL ENTRY OF THE LAKEWOOD MUNICIPAL COURT OVERRULING MOTION FOR JUDGMENT NON OBSTANTE VEREDICTO

To-wit January 6, 1989

No. 88 CVF 3677

The Lakewood Municipal Court

Term, A. D. 1989

12900 LAKE AVE. CONDO ASSOCIATION
and FIRST FEDERAL SAVINGS BANK,
Plaintiffs,

vs.

WALTER BETHKE,
Defendant.

JUDGMENT ENTRY

Defendant's Motion for Judgment Non Obstante Veredicto pursuant to Civil Rule 50 (B) is hereby overruled.

JUDGMENT ENTRY OF THE LAKEWOOD MUNICIPAL COURT OVERRULING MOTION TO APPOINT QUALIFIED APPRAISER

To-wit December 5, 1988

No. 88 CVF 3677

The Lakewood Municipal Court

Term, A. D. 1988

12900 LAKE AVE. CONDO ASSOCIATION,
et al.,
Plaintiff,

vs.

WALTER S. BETHKE,
Defendant.

JUDGMENT ENTRY

Defendant's Motion to Appoint Qualified Appraiser to Appraise Property claimed as exempt and to tax his fees as costs is hereby overruled.

JUDGMENT ENTRY OF THE LAKEWOOD MUNICIPAL COURT OVERRULING MOTION TO STRIKE

To-wit December 5, 1988

No. 88 CVF 3677

The Lakewood Municipal Court

Term, A. D. 1988

12900 LAKE AVE. CONDO ASSOCIATION,
et al.,
Plaintiff,

vs.

WALTER S. BETHKE,
Defendant.

JUDGMENT ENTRY

Plaintiff's Motion to Strike Defendant's Answer to Motion in Opposition to Claim of Exemption is hereby overruled.

JUDGMENT ENTRY OF THE LAKEWOOD MUNICIPAL COURT OVERRULING MOTION FOR RETURN OF PROPERTY

To-wit January 6, 1989

No. 88 CVF 3677

The Lakewood Municipal Court

Term, A. D. 1989

12900 LAKE AVE. CONDO ASSOCIATION
and FIRST FEDERAL SAVINGS BANK,
Plaintiffs,

vs.

WALTER BETHKE,
Defendant.

JUDGMENT ENTRY

The court having previously ordered the return of the subject property, defendant's Motion for Return of Property filed 12-8-88 is hereby overruled.

JUDGMENT ENTRY OF THE LAKEWOOD MUNICIPAL COURT OVERRULING MOTION TO ADD NEW PARTY DEFENDANT

To-wit February 7, 1989

No. 88 CVF 3677

The Lakewood Municipal Court

Term, A. D. 1989

12900 LAKE AVE. CONDO ASSOCIATION
and FIRST FEDERAL SAVINGS BANK,
Plaintiffs,

vs.

WALTER BETHKE,
Defendant.

JUDGMENT ENTRY

Defendant's Motion to Add New Party Defendant is hereby overruled.

JUDGMENT ENTRY OF THE LAKEWOOD MUNICIPAL COURT OVERRULING OBJECTION TO JUDGMENT

To-wit January 6, 1989

No. 88 CVF 3677

The Lakewood Municipal Court

Term, A. D. 1989

12900 LAKE AVE. CONDO ASSOCIATION
and FIRST FEDERAL SAVINGS BANK,
Plaintiffs,

vs.

WALTER BETHKE,
Defendant.

JUDGMENT ENTRY

Defendant's objection to judgment entered 12-5-88 is hereby overruled.

JUDGMENT ENTRY OF THE LAKEWOOD MUNICIPAL COURT DENYING REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW

To-wit February 7, 1989

No. 88 CVF 3677

The Lakewood Municipal Court

Term, A. D. 1989

12900 LAKE AVE. CONDO ASSOCIATION
and FIRST FEDERAL SAVINGS BANK,
Plaintiffs,

vs.

WALTER BETHKE,
Defendant.

JUDGMENT ENTRY

Defendant's Request for Findings of Fact and Conclusions of Law are hereby denied in accordance with Ohio Rule of Civil Procedure, Rule 52.

UNITED STATES CONSTITUTION

AMENDMENT 14

Section 1. Citizens of the United States.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

OHIO CONSTITUTION

ART. 1, §16

§16. [Redress in courts.]

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

[Suits against the state.] Suits may be brought against the state, in such courts and in such manner, as may be provided by law. (As amended September 3. 1912.)

* * *

28 USC §1257(3)

* * *

"§1257. State courts; appeal; certiorari

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

* * *

"(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

* * *

OHIO REVISED CODE

§2323.51 Frivolous conduct in civil actions.

(A) As used in this section:

(1) "Conduct" means filing a civil action, asserting a claim, defense, or other position in connection with a civil action, or taking any other action in connection with a civil action.

(2) "Frivolous conduct" means conduct of a party to a civil action or of his counsel of record that satisfies either of the following:

(a) It obviously serves merely to harass or maliciously injure another party to the civil action;

(b) It is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

(B)(1) Subject to divisions (B)(2) and (3), (C), and (D) of this section, at any time prior to the commencement of the trial in a civil action or within twenty-one days after the entry of judgment in a civil action, the court may award reasonable attorney's fees to any party to that action adversely affected by frivolous conduct. The award may be assessed as provided in division (B)(4) of this section.

(2) An award of reasonable attorney's fees may be made pursuant to division (B)(1) of this section upon the motion of a party to a civil action, but only after the court does all of the following:

(a) Sets a date for a hearing to determine whether particular conduct was frivolous, to determine, if the conduct was frivolous, whether any party was adversely affected by it, and to determine, if an award is to be made, the amount of that award;

(b) Gives notices of the date of the hearing described in division (B)(2)(a) of this section to each party or counsel of record who allegedly engaged in frivolous conduct and to each party allegedly adversely affected by frivolous conduct;

(c) Conducts the hearing described in division (B)(2)(a) of this section, allows the parties and counsel of record involved to present any relevant evidence at the hearing, including evidence of the type described in division (B)(5) of this seciton, determines that the conduct in question was frivolous and that a party was adversely affected by it, and then determines the amount of the award to be made.

(3) The amount of an award that is made pursuant to division (B)(1) of this section shall not exceed, and may be equal to or less than, whichever of the following is applicable:

(a) If the party is being represented on a contingent fee basis, an amount that corresponds to reasonable fees that would have been charged for legal services necessitated by the frivolous conduct had the party been represented on an hourly fee basis or another basis other than a contingent fee basis.

(b) In all situations other than that described in division (B)(3)(a) of this section, the attorney's fees that were both reasonably incurred by a party and necessitated by the frivolous conduct.

(4) An award of reasonable attorney's fees pusuant to division (B)(1) of this section may be made against a party, his counsel of record, or both.

(5) In connection with the hearing described in division (B)(2) of this section, each party who may be awarded reasonable attorney's fees and his counsel of

record may submit to the court or be ordered by the court to submit to it, for consideration in determining the amount of any such award, an itemized list or other evidence of the legal services necessitated by the alleged frivolous conduct, the time expended in rendering the services, and whichever of the following is applicable:

(a) If the party is being represented by that counsel on a contingent fee basis, the reasonable attorney's fees that would have been associated with those services had the party been represented by that counsel on an hourly fee basis or another basis other than a contingent fee basis;

(b) In all situations other than those described in division (B)(5)(a) of this section, the attorney's fees associated with those services.

(c) An award of reasonable attorney's fees under this section does not affect or determine the amount of or the manner of computation of attorney's fees as between an attorney and the attorney's client.

(D) This section does not affect or limit the application of any provision of the Rules of Civil Procedure or another section of the Revised Code to the extent that such a provision or section prohibits an award of attorney's fees or authorizes an award of attorney's fees in a specified manner, generally, or subject to limitations.

HISTORY: 142 v H 327 (Eff 10-20-87); 142 v H 1. Eff 1-5-88.

* * *

§2329.66(A)(2)

§2329.66 Exempted interests and rights.

(A) Every person who is domiciled in this state may hold property exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order, as follows:

* * *

(2) The person's interest, not to exceed one thousand dollars, in one motor vehicle;

* * *

§2721.02 Force and effect of declaratory judgments. (GC §12102-1)

Courts of record may declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding is open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. Such declaration has the effect of a final judgment or decree.

HISTORY: GC §12102-1; 115 v 495. §1. Eff 10-1-53.

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OHIO RULES OF CIVIL PROCEDURE

RULE 11

Rule 11. Signing of Pleadings

Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address. Except when otherwise specifically provided by these rules, pleadings need not be verified or accompanied by affidavit. The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For a willful violation of this rule an attorney may be subjected to appropriate action. Similar action may be taken if scandalous or indecent matter is inserted.

RULE 12(B)(6)

RULE 12. Defenses and objections—when and how presented—by pleading or motion—motion for judgment on the pleadings

(B) How presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: *** (6) failure to state a claim upon which relief can be granted, ***

RULE 57. Declaratory judgments

The procedure for obtaining a declaratory judgment pursuant to Sections 2721.01 to 2721.15, inclusive, of the Revised Code, shall be in accordance with these rules. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may advance on the trial list the hearing of an action for a declaratory judgment.